



EldersChoice of Connecticut, LLC

PO Box 370361
West Hartford, CT 06137
Office (860) 888.3373
CT DCP Registration: HCA.0000489
CT DOL Registration: 2012471

**TESTIMONY OF JOHN D. SHULANSKY
TO THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
MARCH 8, 2016**

**HB 5368 AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER
COMPANION SERVICES**

SB 393 AN ACT CONCERNING DOMESTIC WORKERS

Distinguished Chairmen and members of the Committee:

My name is John D. Shulansky. I am managing director and a partner of EldersChoice of Connecticut, LLC a Homemaker Companion Agency and classified as a Registry; and also registered with the Department of Labor as an Employer Fee Paid Employment Agency. I also serve as Vice President of the Connecticut Association for Home Care Registries.

I appear before you today to speak regarding two bills. The first bill, HB-5368 – An Act Concerning Homemaker and Homemaker Companion Services – is a variation on the same bill this Committee has raised for a number of years, and attempts to create a pure fantasy constructed from innuendo, smoke and mirrors, requiring that all caregivers be classified as employees of a Homemaker Companion Agency.

There are a number of impacts arising from such a change, which quite clearly is in contravention of the revised US DOL Fair Labor Standards Act. These impacts result in increased costs of non-medical 24/7 live-in care by 35-60 percent, more rapid spend down of assets by frail elderly, increased Medicaid spending, less protections for the consumer, and quite magically, eliminates Registries as competitor of Agencies in Connecticut.

After more than three years of research and over 50,000 public comments, the US Department of Labor final rules on this subject issued in 2013 and affirmed by Federal Courts in 2015, clearly allow for and expect potential direct care workers to be referred by a Registry and be the sole employee of the consumer. US DOL Fact Sheet #79E offers this example:

"Example One – Private-Pay Registry with Consumer as Sole Employer

A private home care agency advertises as a "registry" that provides potential home care workers. The registry conducts a background screening and verifies credentials of potential workers, and assists consumers by locating home care workers who may be able to meet a client's needs. The registry informs a home care worker of the opportunity to work for a potential client. If interested in the

Labor and Public Employees Committee

Testimony by John D. Shulansky

March 8, 2016

opportunity, the worker is responsible for contacting the client for more information. The worker is not obligated to pursue this or any other opportunity presented and is not prohibited from registering with other referral services or from working directly with clients independent of this private registry. The registry does not provide its workers any equipment, does not supervise or monitor any work they perform, and has no power to terminate a worker's employment with a client. The registry processes the worker's payroll checks according to information provided by clients, but does not set the pay rate.

"In this scenario, the home care worker is likely not an employee of the registry, and the consumer is the sole employer. There is no permanency in the relationship between the registry and provider. The registry does not provide any equipment or facilities, exercises no control over daily activities, and has no power to hire or fire. The worker is able to accept as many or as few clients as he or she wishes. The client sets the rate of pay and negotiates directly with the worker about which services will be provided. This conclusion, however, does not mean that every "registry" will not be an employer; any change in the specific facts may change the outcome. For example, a home care registry that maintains a log of assignments showing the shifts worked, establishes the rate which will be charged, and exercises control over the home care workers' duties and the work schedules would be an employer."

I strongly urge you to reject HB-5368 for what it truly is: an unabashed effort to eliminate competition in the marketplace that will increase costs to the consumer, increase costs to the state, and fail to provide any meaningful improvement to public policy and protections to the consumer.

The second bill, SB-393 – An Act Concerning Domestic Workers is an important bill. We strongly believe that all domestic workers should be protected with basic rights in a household, especially in a 24/7 live-in environment. This bill has many worthwhile and critical provisions, not the least of which are notice, wages, privacy and safety. No domestic worker should be exploited.

This bill also has a number of flaws, the most significant of these is to dramatically increase the cost of 24/7 live-in non-medical home care to the frail elderly, which results in higher costs to the state. Another serious consequence of this bill is to encourage consumers in need of non-medical home care to seek caregivers from the unregulated, underground markets, side-stepping the very protections intended by the proposed statute, and putting consumers at risk. Moreover, some elements of SB-393 ignore the reality of live-in domestic workers and the federal FLSA "live-in exemption" protections provided to the consumer and direct care worker.

Given our fiscal realities, we should limit discussion to consider provisions that can be enacted into law and effectively enforced without additional costs to the state or consumer. In addition, we must include other stakeholders who were not direct participants in the Domestic Worker Task Force, including DSS, DPH, DOA, and DCP.

Labor and Public Employees Committee
Testimony by John D. Shulansky
March 8, 2016

In closing ladies and gentlemen, on this subject, we have to enact measures to protect the domestic worker as well as the consumer. Both of these constituent group are at risk of exploitation, and we have to be absolutely certain that we do this in a way that is affordable, responsible and equitable to all.

Thank you for your time and consideration.